

House Bill 238

By: Representatives Fleming of the 117th, Keen of the 179th, Burkhalter of the 50th, Dodson of the 75th, Cooper of the 41st, and others

A BILL TO BE ENTITLED
AN ACT

To amend Title 9 of the Official Code of Georgia Annotated, relating to civil practice, so as to change certain provisions relating to venue; to change provisions relating to determination of venue in actions against joint defendants and the effect of dismissal of one or more parties; to provide that a court of this state may decline to adjudicate certain claims under the doctrine of forum non conveniens; to provide for practice and procedure in connection therewith; to provide for other related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by striking Code Section 9-10-31, relating to actions against certain codefendants residing in different counties, and inserting in lieu thereof the following:

"9-10-31.

(a) The General Assembly finds that Paragraph IV of Section II of Article VI of the Georgia Constitution permits a trial and entry of judgment against a resident of Georgia in a county other than the county of the defendant's residence only if the Georgia resident defendant is a joint obligor, joint tort-feasor, joint promisor, copartner, or joint trespasser.

(b) Subject to the provisions of Code Section 9-10-31.1, joint ~~Joint or joint and several~~ tort-feasors, obligors, or promisors, or joint contractors or copartners, residing in different counties, may be subject to an action as such in the same action in any county in which one or more of the defendants reside. ~~If, however, the court determines prior to the commencement of trial that:~~

~~(1) The plaintiff has brought the action in bad faith against all defendants residing in the county in which the action is brought; or~~

~~(2) As a matter of law, no defendant residing in the county in which the action is brought is a proper party;~~

~~the action shall be transferred to the county and court which the plaintiff elects in which venue is proper. The burden of proof on the issue of venue shall be on the party claiming improper venue by a preponderance of evidence.~~

~~(b)(c)~~ If all defendants who reside in the county in which an action is pending are discharged from liability before ~~the commencement of trial~~ or upon the return of a verdict by the jury or the court hearing the case without a jury, a nonresident defendant may require that the case be transferred to a county and court in which venue would otherwise be proper. If venue would be proper in more than one county, the plaintiff may elect from among the counties in which venue is proper the county and the court in which the action shall proceed.

~~(c) If all defendants who reside in the county in which the action is pending are discharged from liability after the commencement of trial, the case may be transferred to a county and court in which venue would otherwise lie only if all parties consent to such transfer.~~

~~(d) For purposes of this Code section, trial shall be deemed to have commenced upon the jury being sworn or, in the instance of a trial without a jury, upon the first witness being sworn.~~

~~(e)(d)~~ Nothing in this Code section shall be deemed to alter or amend the pleading requirements of Chapter 11 of this title relating to the filing of complaints or answers.

~~(f) This Code section shall apply to actions filed on or after July 1, 1999."~~

SECTION 2.

Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by adding after Code Section 9-10-31 a new Code Section 9-10-31.1 to read as follows:

"9-10-31.1.

(a) If a court of this state, on written motion of a party, finds that in the interest of justice and for the convenience of the parties and witnesses a claim or action would be more properly heard in a forum outside this state or in a different county of proper venue within this state, the court shall decline to adjudicate the matter under the doctrine of forum non conveniens. As to a claim or action that would be more properly heard in a forum outside this state, the court shall dismiss the claim or action. As to a claim or action that would be more properly heard in a different county of proper venue within this state, the venue shall be transferred to the appropriate county. In determining whether to grant a motion to dismiss an action or to transfer venue under the doctrine of forum non conveniens, the court shall give consideration to the following factors:

(1) Relative ease of access to sources of proof;

(2) Availability and cost of compulsory process for attendance of unwilling witnesses;

(3) Possibility of viewing of the premises, if viewing would be appropriate to the action;

1 (4) Unnecessary expense or trouble to the defendant not necessary to the plaintiff's own
2 right to pursue his or her remedy;

3 (5) Administrative difficulties for the forum courts;

4 (6) Existence of local interests in deciding the case locally; and

5 (7) The traditional deference given to a plaintiff's choice of forum.

6 (b) A court may not dismiss a claim under this Code section until the defendant files with
7 the court or with the clerk of the court a written stipulation that, with respect to a new
8 action on the claim commenced by the plaintiff, all the defendants waive the right to assert
9 a statute of limitations defense in all other states of the United States in which the claim
10 was not barred by limitations at the time the claim was filed in this state as necessary to
11 effect a tolling of the limitations periods in those states beginning on the date the claim was
12 filed in this state and ending on the date the claim is dismissed."

13 **SECTION 3.**

14 This Act shall become effective July 1, 2005, and shall apply with respect to actions pending
15 on that date as well as actions filed on or after that date.

16 **SECTION 4.**

17 All laws and parts of laws in conflict with this Act are repealed.